

ATTACHMENT 28

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3
4

5 IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
6 ANTITRUST LITIGATION 08-MDL-02002
7

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9 PHILADELPHIA, PA
10

11 MAY 22, 2018
12 DAY FOURTEEN
13

14 BEFORE: THE HONORABLE GENE E.K. PRATTER, J.
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17 TRIAL TRANSCRIPT
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21 KATHLEEN FELDMAN, CSR, CRR, RPR, CM
22 Official Court Reporter
23 Room 1234 - U.S. Courthouse
24 601 Market Street
25 Philadelphia, PA 19106
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(Transcript produced by mechanical shorthand via C.A.T.)

1 THE DEPUTY CLERK: Could you please have a seat.
 2 Please state your full name and spell your last name for the
 3 record.
 4 THE WITNESS: David Stoddard Hurd, H-U-R-D.
 5 THE COURT: Good afternoon, Mr. Hurd.
 6 THE WITNESS: Good afternoon.
 7 THE COURT: It looks different from here, doesn't
 8 it?
 9 THE WITNESS: It does.
 10 THE COURT: You may proceed.
 11 DIRECT EXAMINATION
 12 BY MR. LEVINE:
 13 Q. By whom are you employed today?
 14 A. Rose Acre Farms.
 15 Q. And incapacity are you employed?
 16 A. I'm the vice president of life production.
 17 Q. Can you explain to the jury what vice president of life
 18 production means?
 19 A. So far our company, everything from breeder farms,
 20 hatchery, the young growing bird pullet farms lay production,
 21 I'm in charge of that department.
 22 Q. Are you in charge of all the hens essentially?
 23 A. Yes. Yes.
 24 Q. When did you start your employment at Rose Acre?
 25 A. May of 1986.

1 Q. And when did you graduate college?
 2 A. May of 1986.
 3 Q. So is it fair to say that you have been employed by Rose
 4 Acre all the way through since you've graduated college?
 5 A. Yes.
 6 Q. And where did you graduate from?
 7 A. Purdue University in Indiana.
 8 Q. And what was your major in college?
 9 A. Animal Sciences s.
 10 Q. You got a Bachelor's of science in that?
 11 A. Correct.
 12 Q. And when you were first hired by Rose Acre, what was your
 13 position?
 14 A. I was hired as a manager trainee and I rotated through
 15 various live production departments to see how the company
 16 worked.
 17 Q. Okay. And did you continue in the live production
 18 department all the way through until today?
 19 A. Yes.
 20 Q. And have you ever had any other responsibilities at Rose
 21 Acre?
 22 A. Yes. I was a Board of Director member from 1994 to 2008
 23 and then again from 2012 to 2015.
 24 Q. And how many employees ultimately report to you?
 25 A. I think today we have about 2,000 employees, and it's a

1 little less than 50 percent that work in the live production
 2 department, so around 900.
 3 Q. Now, we've heard a lot about vertically integrated
 4 companies and I don't want to repeat everything that you've
 5 heard today, but can you just basically sketch out what that
 6 means to you in terms of Rose Acre being an integrated
 7 company?
 8 A. Yes. So a smaller mid-sized company may have to go out
 9 and buy feed; they may have to go out and buy day-old baby
 10 chicks or started pullets ready to lay eggs. We actually have
 11 all of those departments inhouse. So we have our own breeder
 12 flocks where we produce the fertile eggs, our own hatchery
 13 where we hatch day-old chicks, our own facilities where we
 14 grow them up to sexual maturity and then layer farms, females,
 15 et cetera.
 16 MR. LEVINE: Can you pull up Demonstrative 6,
 17 please.
 18 BY MR. LEVINE:
 19 Q. Now, does this accurately reflect the kind of stages of
 20 egg production at Rose Acre Farms?
 21 A. Yes.
 22 Q. Okay. And I believe you said you raise breeder flocks.
 23 Where do you get the breeder flocks from?
 24 A. There's a couple different genetic companies that sell
 25 the breed stock for laying hens, and we buy them as a day-old

1 baby chick and raise them in our breeder pullet house where
 2 then they get to 17 weeks of age, where they're sexually
 3 mature, the males and females, and we move them together over
 4 to the breeder flock location.
 5 Q. And what happens at the breeder flock location?
 6 A. They're there from 17 weeks of age up to about 65 weeks
 7 of age where they interact, lay fertile eggs. We collect the
 8 eggs daily and ship them to our hatchery.
 9 Q. Is that what's depicted in the second square at the top?
 10 A. Yes.
 11 Q. Okay. And what happens at the hatchery?
 12 A. At the hatchery, we gather the eggs into different lots
 13 depending upon how many chicks we want to hatch on an
 14 individual day, and we put them in large industrial incubators
 15 where we can put them through a 21-day incubation process
 16 where they hatch.
 17 Q. And once they are hatched, how long do they stay at the
 18 hatchery?
 19 A. The day they hatch, they're either shipping out later
 20 that afternoon or the very first thing the next morning. We
 21 have a large environmentally-controlled trailer that we load
 22 the chicks up on so we can control the temperature from the
 23 hatchery to their destination.
 24 Q. Okay. And where do they go from the hatchery? Do they
 25 go straight to the laying farms?

1 A. No, to the pullet grow-out facilities where we raise them
 2 from day of age up to the 16, 17 weeks.
 3 Q. And just once again, just to make sure our terminology is
 4 right, what is a pullet?
 5 A. A pullet is a young chicken that is not sexually mature
 6 yet, ready to lay eggs. Once she is sexually mature and
 7 laying eggs, we call her a layer.
 8 Q. Okay. And at what age does the pullet turn into a layer?
 9 A. About that, 16, 17 weeks.
 10 Q. And then at about 16, 17 weeks, what happens to the
 11 pullet?
 12 A. Well, at that time, we've finished any of the vaccination
 13 programs that we do with the pullets. We have them ready to
 14 move into an empty laying house, and then we schedule the
 15 transportation and the crews to get the labor done.
 16 Q. Okay. And once that is done, they are delivered to the
 17 laying farms?
 18 A. Yes.
 19 Q. And how long do they stay on the laying farms?
 20 A. Um, if it's a single cycle flock, they will stay there
 21 from 17 weeks to about 80 or 85 weeks of age. If we're going
 22 to molt the flock, then we can extend its life another 35
 23 weeks or so. So molt between 65 to 70 weeks of age, we take
 24 them out to about 115 weeks.
 25 Q. So when you say "single cycle," you mean a flock that is

1 not going to be molted at all?
 2 A. Correct.
 3 Q. So if I understood that correctly, does that mean if you
 4 molt your flocks, you will actually extend the life of the
 5 bird?
 6 A. Yes.
 7 Q. Okay. And why do you molt them at 65, 70 weeks?
 8 A. Um, molting, as you've heard, is a natural process and we
 9 want to time that so that all the birds are going through
 10 that -- that shutdown of a reproductive system at the same
 11 time for that resting period, and we time that together with
 12 dropping the lights. So we want to take the bird naturally.
 13 She produces hormones throughout spring and summer to be
 14 reproductive. And obviously a bird doesn't want to be
 15 reproductive in the wintertime when days are short.
 16 So we bring her in to production, get her up to 16
 17 hours a day and we hold that year round. That's how we keep
 18 the layer laying 12 months a year. So the molting process
 19 drops her down, puts her out of production. We then try to
 20 attain a 20 percent body weight loss, and then we start the
 21 increasing of day length again to get the hormones to come
 22 back feeding her and bringing her back into production.
 23 Q. Okay. And we've heard about different types of molting,
 24 but if you did a feed withdrawal, how long did Rose Acre keep
 25 feed from the bird during this process?

1 A. When we were doing the feed withdrawal molt, it was five
 2 to seven days max. We had it on water all the time and again,
 3 we got that 20 percent of body weight off much quicker than we
 4 do today.
 5 Q. Okay. And when you do a modified feed withdrawal, how
 6 long are they on that?
 7 A. Well, they're on that diet feed and they're probably on
 8 there for that 10 to 14 days to get them out of production and
 9 get that body weight loss that we're trying to target.
 10 Q. And how does molting actually affect egg production?
 11 A. Well, on the single cycle flock, if you took that bird
 12 out to that 80 or 85-week target, as a young bird comes into
 13 production, she starts not laying any eggs, and then right
 14 around 30, 35 weeks, she'll peak about 90 percent production.
 15 So, in other words, 95 percent of the birds in that
 16 house are laying an egg a day. And it slowly trails off the
 17 older she gets. So at 80 to 85 weeks, you may be down around
 18 a little over 70 percent hen days; 70 percent of them are
 19 laying an egg a day.
 20 If we put her through that molt process and give her
 21 resting period, again after you bring her back into
 22 production, she won't quite be up as high as when she was
 23 younger, but she'll get up around 90 percent, 92 percent for a
 24 period of time and then out to the 115 weeks when we start
 25 getting back down into those 70 percent ranges.

1 Q. So will molting a bird actually cause more production by
 2 that hen?
 3 A. Yes. It increases the number of eggs that that hen can
 4 lay over her lifetime.
 5 Q. And extends her lifetime as well?
 6 A. Extends her lifetime as well, yes.
 7 Q. Now, in terms of the planning process, if I wanted to
 8 make sure that there was a given hen in the house by, let's
 9 say, January of 2020, how long is the planning process, do I
 10 have to start to think about getting that bird into that
 11 house?
 12 A. Well, we're vertically integrated. So we have to
 13 schedule not only the breeders, but the hatchery, pullet
 14 growing, laying, and then the crews that do all of the labor
 15 and moving. So it's a minimum of a year and a half and
 16 possibly, you know, around two years to go ahead and get that
 17 done.
 18 Q. And what would happen if there was a disruption along
 19 that sort of production process?
 20 A. Um, it's a very complicated schedule. There's a lot of
 21 people that work with me on making sure the schedule happens,
 22 and if you can imagine, you know, you've got a certain amount
 23 of hatching eggs being generated every day, being delivered to
 24 the hatchery. They're only good for a certain amount of time.
 25 If you hold them too long, they're no longer going to be

1 fertile and hatched for you.

2 We have chicks scheduled to hatch. They spend the

3 night at least at the hatchery and that's it. So if the

4 pullet farm isn't moved out and cleaned up and ready to go,

5 then we get a backup there. We have pullets that start laying

6 eggs. They can't lay eggs in the pullet farm. They're not

7 designed to collect eggs at all. So it's, you know, just --

8 it's a big train on a track going in one direction that we're

9 generating for a company our size.

10 Q. Okay. Now, you've heard about -- sitting here in the

11 courtroom about the UEP recommendations for short-term supply

12 management?

13 A. Yes.

14 Q. Okay. Now, before this case was filed, were you even

15 aware that these recommendations were being made?

16 A. No, I wasn't.

17 Q. And let me be clear. As the VP of the live production,

18 has Rose Acre ever engaged in early molting following the UEP

19 recommendations?

20 A. No, we have not.

21 Q. Has Rose Acre ever engaged in early slaughter following

22 the UEP recommendations?

23 A. No, we have not.

24 Q. Has Rose Acre ever engaged in a chick-hatch reduction

25 following a UEP recommendation?

1 hearing about. We have some in larger colony cages which,

2 instead of holding five to eight birds, maybe they hold up to

3 99 to 100 depending on the size of the colony group. We have

4 some cage-free, and we have I think one small free-range

5 flock.

6 Q. And sitting here today, how much of

7 Rose Acre's production is in what you termed "commercial

8 cages"?

9 A. Today, it's about 75 percent or better.

10 Q. And how many hens does that translate to?

11 A. Close to 20 million.

12 Q. Okay. And what would be the next largest category?

13 A. Cage-free.

14 Q. And how many hens are in cage-free systems today?

15 A. Um, a little over 4 million.

16 Q. Now, I'm sure you might recall a discussion about

17 A-frames.

18 A. Yes.

19 Q. Are you familiar with what an A-frame system is?

20 A. Yes.

21 Q. And were you familiar with Rose Acre's employment of

22 A-frame systems?

23 A. Yes.

24 Q. When you got there in -- once you graduated Purdue, did

25 Rose Acre employ A-frames?

1 A. No. No, we have not.

2 Q. And if one were -- if one were interested in reducing egg

3 production, would molting be a good way to do so?

4 A. Not in my opinion because you're taking birds at that

5 level of production, putting them out for a short time to

6 bring them back in at a higher rate. So it's a very, very

7 short-term drop in egg production.

8 Q. And then what would happen when they came back?

9 A. They'd be laying more eggs than they were before.

10 Q. Now, what would have happened had Rose Acre even

11 attempted to follow any of these recommendations?

12 A. We didn't sell our chicks, and we were using all of our

13 chicks internally.

14 What were the recommendations again? Early molting?

15 That would change the sellout date that you would hold the

16 birds for, which messes around with the schedule. And then

17 early sellouts, and you'd have empty houses waiting on birds.

18 Q. Thank you. And what about a chick-hatch reduction?

19 A. I think I said that before. It didn't make any sense.

20 We're not selling them. We're using them internally.

21 Q. Now, let me ask you about the various methods in which

22 Rose Acre holds its egg-laying hens. How many different types

23 of systems does Rose Acre employ in housing its egg-laying

24 hens?

25 A. We have birds in commercial cages, as everyone's been

1 A. Yes. That was the majority of the cage systems that we

2 had.

3 Q. And can you describe for the jury the type of A-frame

4 systems that Rose Acre employed when you first got there in

5 the '80s?

6 A. Sure. A-frame gets its name from the framework that

7 holds the cages up. So it's a big metal A. At the top of the

8 A are two cages side by side, and then as you go down the

9 staggered leg of each side of the A, there's more levels of

10 cages added. So it's hollow in the middle. There's no cages

11 in the middle.

12 Early on there was an A-frame style of cage where it

13 was 100 percent draw through. So the cages were stacked

14 directly on top of each other. The cages that we had when I

15 started in '86 had a manure shield on the back of an A-frame

16 cage on the back. So as it was staggered -- as a bird is

17 oriented to the front of the cage, all the feeding in our

18 cages happens in the front and all the watering happens in the

19 front.

20 And a bird defecates when it's eating and drinking

21 at the most, so the design of the cages was, as the birds were

22 standing forward and eating and drinking, that manure falls on

23 the manure shield. Then it dries up on the shield and falls

24 down between either side of the A-frame leg down into the

25 manure pits below where they're stored.

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1 Q. So they were not falling on the hens below them?

2 A. No, the shield was there designed to catch that.

3 Q. And are there any other shield-type implements that

4 Rose Acre uses with it's a-frame systems now?

5 A. As systems evolved, there was a scraper board that got

6 manufactured instead of the shield. The shield was basically

7 a thick plastic curtain. And over time those can fall and

8 need repair. And the board was a more permanent structure

9 that covered below. Every level of cages on that A-frame

10 would have a board underneath it with a scraper that would

11 travel along and scrape the board daily.

12 Q. Okay. And did that also prevent the manure from falling

13 on the hens below?

14 A. Yes.

15 Q. Okay. And today, Rose Acre still has some A-frames?

16 A. Yes.

17 Q. Do all of the A-frames that Rose Acre has have at least a

18 manure shield or a scraper Board?

19 A. Yes.

20 Q. Now, let me ask you some of the differences in your

21 experience between the egg-production practices now and those

22 that existed in the 1990s. Are they different at all?

23 A. Um, I mean, the basics are there still, the feed, water,

24 and air that we do on a daily basis. I think the biggest

25 difference today versus the 1990s is the level of

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1 Q. And has that changed from 2000 onward?

2 A. Yes. There's a lot more environmental impact looking at

3 the area that you're adding. They want to know exactly, you

4 know, how manure is going to be stored and handled, how much

5 capacity for storage you do have, where it's going to be

6 spread after you sell it even if it's no longer in your

7 control anymore -- things of that nature.

8 MS. STATSKY SMITH: Your Honor, can we request that

9 counsel restrict the questioning to the time period that's

10 relevant to this litigation?

11 THE COURT: Yes, you may ask -- you can move along,

12 okay?

13 BY MR. LEVINE:

14 Q. Now, we've heard a lot about UEP Certified Program. Do

15 you remember that?

16 A. Yes.

17 Q. Now, are there any other audits that Rose Acre goes

18 through today?

19 A. Yes. We have several customer audits, several customers

20 that ask for outside third-party verification audits. For

21 example, our cage-free, we have Humane Farm Animal Care audit

22 we have to go through. Some of them request that American

23 Humane audit. Walmart, Costco have individual programs.

24 Q. And the humane farm and animal --

25 A. American Humane Certified and the Humane Farm Animal

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1 documentation that's required to prove we're doing what we say

2 we're doing, that the training is being done. A lot more

3 customers inquiring what's going on in the laying houses and

4 coming in, wanting to see what's going on in the laying

5 houses. We really didn't have that type of activity in the

6 1990s.

7 Q. Okay. What about the permitting for new houses and the

8 like? Are there any differences in the 2000s than the 1990s?

9 MS. STATSKY SMITH: Your Honor, we object to the

10 time period being referenced.

11 THE COURT: What time period are you referencing?

12 MR. LEVINE: 1990 versus 2000s.

13 THE COURT: I'm going to allow it. It's background

14 information.

15 THE WITNESS: In 1990s getting a permit to add to an

16 existing facility or a new facility was a little bit more

17 streamlined than it is today in the 2000s. There's a lot more

18 hoops to have to jump through.

19 BY MR. LEVINE:

20 Q. Sorry. And what was the general time frame in obtaining

21 permits in the 1990's?

22 A. Depending on the states and the counties, some could be

23 within a few months, maybe up to six months, depending on what

24 levels of permission you needed for the state permit or county

25 permit.

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1 Care, yes.

2 Q. Are those sort of, if I can, certified programs for

3 cage-free hens?

4 A. Yes.

5 Q. Okay. And those programs require an audit as well?

6 A. Yes, an annual audit.

7 Q. Now, let me ask you, you're familiar with the Certified

8 Program requirements for animal husbandry, correct?

9 A. Yes.

10 Q. Now, I want to ask you, have your changes -- have your

11 production practices changed once you got on the Certified

12 Program as opposed to what you had been doing beforehand?

13 A. Not significantly, the biggest thing is documentation.

14 Q. Okay. What was the average cage space that Rose Acre

15 gave to its hens prior to joining the Certified Program?

16 A. Over all of our cages, it was around 53 square inches.

17 Q. And was that true ever since you got there, or did that

18 change at some point?

19 A. No, that was pretty much when I got there.

20 Q. And do you have an understanding of what the industry

21 cage space was at that time?

22 A. Well, we've heard that it was 48 or whatever it might be.

23 It's not something that I personally asked people about, so...

24 Q. And we've seen and heard testimony about beak trimming.

25 Are you familiar with beak trimming?

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1 A. Yes.

2 Q. Now, as a result of joining the Certified Program, did

3 Rose Acre have to adjust any of its beak-trimming practices

4 because it became part of the Certified Program?

5 A. No. Early on, when I first started, we were beak

6 trimming birds at five weeks of age. It was very hard to be

7 consistent at that age, and the birds had issues afterwards if

8 it wasn't done correctly.

9 So early on, we -- since we had our own hatchery, we

10 adopted a day-of-age beak trim. We just felt it was a lot

11 easier to be more consistent at the hatchery and get that

12 stress done at the hatching process.

13 And so when the animal care certification rules came

14 out and requested that you do it ten days of age or younger,

15 we were already there at that day of age.

16 Q. How about with respect to ammonia? Did Rose Acre have to

17 change its production practices to comply with the ammonia

18 requirements of the Certified Program?

19 A. The only thing we did was document when it was at those

20 levels that needed corrective action. Every day of the week

21 we have people in the houses with the birds. And during the

22 ammonia -- during the winter you can have sometimes ammonia

23 creeps up. Just before and now, what we do is we have

24 ventilation fans, and we put them on purges, and we get that

25 ammonia down. I mean, over time we've even gotten to the

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1 point where we're adding things into the feed to help with

2 ammonia reduction during the winter months.

3 Q. And that's feed you create internally?

4 A. Yes.

5 Q. And what about the handling of the birds? Did Rose Acre

6 have to change any of its practices as a result of joining the

7 Certified Program?

8 A. We've always handled the birds, we felt, the most humane

9 method, manner possible. And again it goes back to just

10 adding the documentation and showing the training for new

11 employees, annual retraining, and having those documents

12 readily available.

13 Q. And what about the provision of water? Did Rose Acre

14 have to change any of its production practices as a result of

15 joining the Certified Program?

16 A. No, no. We've always had water available.

17 Q. And what about the production of light? Did Rose Acre

18 have to change any of its production practices as a result of

19 joining the Certified Program?

20 A. No. Just measuring those light intensities and

21 documenting.

22 Q. Now, we've heard a lot about backfilling. Do you

23 remember that testimony?

24 A. Yes.

25 Q. Okay. And could you describe for us prior to 2005 how

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1 Rose Acre practiced backfilling?

2 A. When we had a flock on a farm -- we have farms of

3 different house ages. So, you know, our typical farm had

4 maybe 12 houses. So when we have flocks get to the molting

5 age, if we had a flock that had a higher than normal mortality

6 where it made sense to do the labor, if we had another flock

7 on that same farm that was getting ready to move out, instead

8 of euthanizing those birds, we'd take them and backfill them

9 into the cages with the flock ready to molt and put them both

10 through the molt, at the same process at the same time.

11 Q. And you said "higher than average mortality." What -- in

12 this 2000 to 2008, what would be the sort of average mortality

13 of a flock?

14 A. Around molt age, I think, you know, you're in that 5 to

15 6 percent mortality range. We would look at anything, you

16 know, in excess of 10 percent as a candidate. But, again, it

17 wasn't something we looked at every single month prior to the

18 molt, and it wasn't something we did on very many flocks in

19 our system. Mostly in Indiana.

20 Q. Okay. So what about your farms in Iowa or Georgia or

21 anywhere else?

22 A. We -- we had, at that time, an internal bird-moving crew

23 that I supervised, and we were able to keep them busy during

24 different times of the year doing various jobs. So we had

25 access to labor to pull this off. In some of the outlying

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1 areas we used contract crews, which were expensive, and it

2 really didn't pay for us to schedule them to come in and do

3 any backfilling in those areas.

4 Q. So the backfilling -- so when Rose Acre did practice

5 backfilling, it was generally limited to the Indiana farms?

6 A. Mostly Indiana. It might have been an occasional Iowa,

7 but...

8 Q. Now, did everyone at Rose Acre believe that backfilling

9 was a practice to be employed?

10 A. No. And I was one of them.

11 Q. When you say "I was one of them," what was your view?

12 A. I didn't think, for the amount of time and energy and

13 labor we were putting into it, that messing up with the birds'

14 social interactions and the pecking order as well as bringing

15 in birds from another house -- even though it's on the same

16 farm, you know, it's -- you're bringing in the chance for

17 birds exposed to different viruses and bacterias into a house

18 that was already on its own track and messing that up.

19 Q. Did everyone at Rose Acre agree with you?

20 A. Um, Anthony Rust was in charge of the laying flocks at

21 the time, and he didn't feel that way. I know Lois Rust

22 agreed with me.

23 Q. Um-hum. Now, you described the backfilling process about

24 taking older flocks and putting them in.

25 Did you ever take young pullets and use them for

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1 backfilling?

2 A. It just -- it doesn't make sense to grow birds that,

3 again, you're trying to bring up in a certain diet and a

4 certain light intensity and put them in with older birds at a

5 different section of their life cycle. So typically we

6 would -- if we had extra pullets, we would -- we're doing

7 everything every day, every week, moving birds out, hatching

8 chicks, moving pullets in. We would just move the extra birds

9 to the next house being filled. So it would spread our hatch

10 date out on the next house, but...

11 Q. Did there ever come a time when you did use young

12 pullets?

13 A. There was an occasion where we did do it. I did not have

14 at that time an empty house to move these birds to because of

15 how they were vaccinated and said, Okay, let's do it. It was

16 better than euthanizing good pullets and instructed the crew

17 to take it out and put them in the house. I asked them to

18 move the cages, make some empty cages for the pullets so at

19 least they could all be in the same cage together and move

20 some of the older birds, space them out around and didn't

21 follow my advice, and mortality rate was very high for the

22 next month because they put one young pullet in with the older

23 birds in different cages.

24 Q. And what happened to that young pullet?

25 A. Most of them died.

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1 THE DEPUTY CLERK: All rise.

2 (Jury in.)

3 THE COURT: Okay, everyone, you may take your seats,

4 make yourselves comfortable.

5 And you may continue.

6 MR. LEVINE: Thank you, Your Honor.

7 BY MR. LEVINE:

8 Q. Mr. Hurd, right before the break, you had mentioned a few

9 minutes earlier than that enriched colony cages. Do you

10 remember that?

11 A. Yes.

12 Q. Okay. Can you just -- since it may be somewhat of a new

13 term, can you explain what those are for the jury?

14 A. It was a point where the industry was trying to add some

15 behavioral things chickens could do inside the cage that they

16 can't do in the commercial cages. So it would be an area in

17 there where they could have a nest curtain to lay eggs, some

18 perching, some areas to do some dust bathing behavior. That's

19 why it was a 99 bird larger colony.

20 Q. Okay. And now I believe you testified earlier that you

21 were on the Board from 1994 through 2008; is that correct?

22 A. Correct.

23 Q. Okay, so that means you would have been on the Board at

24 about the time when Rose Acre decided to join the Certified

25 Program; is that correct?

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1 Q. Why?

2 A. Until we got there and figured out what was going on and

3 resorted what was left.

4 Q. And why did they die?

5 A. From the hen pecking, cannibalism.

6 Q. Did you notice any changes in Rose Acre's production as a

7 result of having joined the Certified Program?

8 A. As we went through the various steps of the phase-in, we

9 did notice a slight increase in eggs per hen as they got a

10 little more space in the cage and lower mortality rates.

11 Certain farms did.

12 MR. LEVINE: Your Honor, I'm going to move to a new

13 topic.

14 THE COURT: Okay, I think that might be a suggestion

15 that it's time for a break. I'm sure you all agree. Please

16 take ten minutes, come back, don't discuss the case and we'll

17 then go until 4:30 today. Thanks very much. See you in a

18 couple of minutes.

19 THE DEPUTY CLERK: All rise.

20 (Jury out.)

21 THE COURT: Enjoy your break, folks.

22 MR. NEUWIRTH: Thank you.

23 THE COURT: Who wants to be the chief wrangler?

24 MR. CALLOW: Let's just start, Your Honor.

25 (After recess:)

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1 A. Yes.

2 Q. Okay. And do you remember any discussions at the Board

3 level about joining the Certified Program?

4 A. Yes. You know, at the time, we saw what was happening

5 with the activism, what customers were asking for, and looking

6 at, you know, McDonald's coming out and saying 72 square

7 inches being the cornerstone of their program. You know, our

8 first reaction was, Well, how did they come up with 72? We're

9 at 53.

10 And looking at the UEP, the group of Scientific

11 Advisory Committee that they had put together, we certainly

12 gave hard thought about, you know, instead of being out alone,

13 going in and using science-based objectives to move that

14 forward.

15 Q. Okay. And you saw some pictures earlier, I believe,

16 about the bird -- feed truck and the graffiti on the wall at

17 Rose Acre?

18 A. Yes. Yes.

19 Q. Is that the first time you've ever seen those photos?

20 A. No, no.

21 Q. When was the first time you saw those photos?

22 A. John Rust had taken those pictures after the events. And

23 at a Board meeting -- that event happened in July. We had a

24 Board meeting in September. It was the first Board meeting

25 after the events.

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1 Q. Okay, September of what year?

2 A. 2000.

3 Q. Okay. And did you have an understanding from the

4 discussions at the Board meeting as to why Rose Acre decided

5 to join the Certified Program?

6 A. Well, as I was saying before, to be able to come up with

7 the guidelines based on science and not just everybody

8 cherry-picking different aspects that they wanted to and

9 customers coming up with their own numbers.

10 Q. Okay. And did you have an understanding as to what

11 customers were telling Rose Acre vis-à-vis the Certified

12 Program?

13 A. Yes, we were hearing that they wanted us to have an

14 Animal Welfare Program.

15 Q. Now, at the Board -- at the Board level, did you discuss

16 what the effect of the Certified Program would be on your

17 flock size?

18 A. Yes.

19 Q. Okay. And what generally did those discussions consist

20 of?

21 A. Well, looking at what we knew, some of the square-inch

22 increases we were going to give birds. You know, we knew what

23 our cage dimensions were, and I came up with some information

24 that informed the Board where we would go, where we would be

25 at each step as we went forward.

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1 BY MR. LEVINE:

2 Q. Okay. And if you look on the upper left-hand corner, the

3 first two columns, can you explain what those columns

4 represent.

5 A. Um, that -- the hatch date and the 17-week date. So the

6 UEP's program had birds after a certain hatch date would be

7 housed at a certain level of square inches. So that just

8 broke down all of the periods of the phasing up to the 67

9 square inches at the bottom.

10 Q. Okay. And what were you trying to represent with the

11 rest of the document?

12 Let's pull up Cort Acres as an example.

13 A. Well, I would start off with the original farm capacity,

14 and then based on those square inches for the available cage

15 space, what change in the farm layer population would occur.

16 Q. Okay. And you did this for every farm in

17 Rose Acre's portfolio?

18 A. Yes. I think in 2002 we had an Oconee Farm that was

19 fairly new, so this looks like just existing farms that we had

20 at the time and not the new one.

21 Q. You say Oconee was fairly new. When did you -- well, how

22 did Oconee come to be in the Rose Acre portfolio?

23 A. We purchased the site with two existing laying farm

24 buildings on it. It was a prior contract farm for us. It was

25 big enough land area to expand upon. And then, after that

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1 MR. LEVINE: Your Honor, may I approach the witness?

2 THE COURT: Yes, you may.

3 BY MR. LEVINE:

4 Q. For identification purposes, Mr. Hurd, I've placed in

5 front of you D-272. Do you recognize it?

6 A. Yes.

7 Q. What do you recognize it as?

8 A. It's the report that we -- I put together for the

9 Rose Acre Farms square-inch effect summary page back in August

10 of 2002.

11 Q. Okay. And there are handwritten notes in the upper

12 left-hand corner. Do you know whose handwritten notes those

13 are?

14 A. Yeah, that's mine.

15 Q. Okay. And how did you prepare this analysis?

16 A. Um, we went out and measured all of our individual cages

17 for all of our farms, and this is a summary of that

18 information farm by farm.

19 Q. Okay.

20 MR. LEVINE: Your Honor, I move for the admission of

21 D-272.

22 MS. STATSKY SMITH: No objection.

23 THE COURT: 272 is admitted.

24 MR. LEVINE: May I publish it, Your Honor?

25 THE COURT: Yes.

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1 point in -- I think it was '99 that we purchased it -- we

2 started adding on eight other laying house buildings to the

3 site in that first phase of expansion.

4 Q. But on this page, you did not represent the Oconee

5 numbers?

6 A. No.

7 Q. Okay. And if you look at the bottom right corner, can

8 you tell the jury what you were intending to tell the Board or

9 to represent by this analysis?

10 A. Yes. I took the existing original capacities of the

11 farms on this sheet here and summarized what that change,

12 percent change, in available cage space would be at the end of

13 the phase-in with no changes being made.

14 Q. Okay. And what was the purpose of conducting this

15 analysis?

16 A. Well, it was to give everybody a heads-up of where we

17 needed to be in our expansion plans to go ahead and make sure

18 that we could continue to supply our customers the eggs that

19 they were already buying today -- and future customers.

20 Q. Okay. And -- sorry. Didn't mean to cut you off.

21 And did you present this analysis to anyone in

22 particular?

23 A. Um, to the Board at the time, whoever was on the Board

24 that date.

25 Q. Okay. And as a result of this analysis and joining the

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1 Certified Program, what were -- what was your understanding as
 2 to what Rose Acre would do with respect to its flock size
 3 moving forward?
 4 A. Well, we initially started looking at how we could
 5 increase the number of layers to make up for the over
 6 20 percent that we were going to lose if we did nothing going
 7 forward. So we had farms where we could remodel existing
 8 cages and bring in cages where we could house more birds; we
 9 had farms we could add housing to, that the processing areas
 10 could handle; and then new sites.
 11 Q. Okay. And did, in fact, Rose Acre engage in that sort of
 12 building program?
 13 A. That as well as some acquisitions.
 14 Q. Okay. Now, you had said "new sites." What new sites are
 15 you referring to?
 16 A. Um, well, Hyde County, the one that everyone's been
 17 hearing about in North Carolina, would have been a new site
 18 for us.
 19 Q. Okay. And do you remember when that site was being
 20 developed?
 21 A. Um, it took a while to get the permitting process going,
 22 but I believe we started construction on the first house in
 23 around 2006, and it took us out to late 2009 before we were
 24 done with the site.
 25 Q. Now, you talked about adding houses to farms. Which

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1 farms, if you can remember --
 2 A. Sure.
 3 Q. -- did you add houses to?
 4 A. We've added houses to our Guthrie Center in Iowa farm;
 5 our Lincoln County, Missouri farm; our Johnson County,
 6 Missouri farm; Pulaski County, Indiana farm -- da, da, da, da,
 7 da, da -- Oconee in Georgia. Those are some of the sites we
 8 added buildings to existing farms.
 9 Q. Okay. And you talked about remodeling houses themselves;
 10 is that correct?
 11 A. Yes.
 12 Q. Okay. What does that mean?
 13 A. Well, we would go into a house and completely take all of
 14 the old cage system out and gut it to the walls. A lot of the
 15 houses had dirt floors where the manure was stored on the
 16 floor, so we came back in and added concrete.
 17 And by "reconfiguring" the cages that we put in,
 18 we were able to increase the capacity of birds being housed in
 19 the same footprint than they were when they were built in the
 20 '70s and early '80s.
 21 Q. So when you remodeled, did you always add more capacity
 22 in those houses?
 23 A. Yes, all of our remodeling was more capacity.
 24 Q. And other -- you mentioned that Oconee you had purchased
 25 in 1999. After you joined the Certified Program, did you

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1 purchase any other farms?
 2 A. Yes. I believe 2004 we purchased two farms in the same
 3 year. That would have been County Line in Indiana and
 4 Germantown in Illinois, a couple of existing farms at that
 5 time.
 6 Um, later, 2009 time frame, we added a Canon,
 7 Georgia farm.
 8 Q. Okay. And to the farms that you acquired -- I believe
 9 you said it was Germantown and County Line?
 10 A. Yes.
 11 Q. Okay. Did you ever do anything to expand the capacity at
 12 those farms?
 13 A. The Germantown farm we came in and added two large
 14 220,000-bird houses to that site, and eventually we added two
 15 more to that site of cage-free.
 16 The County Line one, I don't think we expanded there
 17 because of the size of the processing room and where it was
 18 located. It didn't make sense at the time.
 19 Q. Okay. And as you were expanding your layer farms, were
 20 you also expanding your pullet farms?
 21 A. Yes, and remodeling existing pullet farms in southern
 22 Indiana. And as we added farm sites, obviously we needed to
 23 get pullet growing close to where the layer farms were
 24 located.
 25 Q. And what about your breeder farms? Did you expand those

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1 as well?
 2 A. Yes, we had to expand those to accommodate a larger flock
 3 size.
 4 Q. And did there come a time when you -- when your 2002
 5 analysis was updated?
 6 A. Yes.
 7 MR. LEVINE: Your Honor, may I approach?
 8 THE COURT: Yes, you may.
 9 BY MR. LEVINE:
 10 Q. Mr. Hurd, you've placed in front of you for
 11 identification purposes D-602. Do you recognize this
 12 document?
 13 A. Yes.
 14 Q. Now, did you author this document?
 15 A. No, I did not.
 16 Q. Do you know who did author this document?
 17 A. Yes. Ty Harweger, he works with us.
 18 Q. Okay. And does he work in the live-production
 19 department?
 20 A. Yes. I believe he was the manager of one of our farms at
 21 the time or a regional manager. I can't remember when he
 22 changed job descriptions.
 23 Q. And do you have any recollection as to the circumstances
 24 surrounding his doing this analysis?
 25 A. Well, this was January of 2008, so we were on the cusp of

1 the very final phase-in to 67. So any chicks hatched in April
2 of that same year would be housed at the 67 square inches. So
3 he put this summary together to show us where we were at at
4 that point in time.

5 Q. Okay. And was this document ever shown to the Board of
6 Directors?

7 A. Yes, I think it was presented at a Board meeting.

8 Q. Okay.

9 MR. LEVINE: Your Honor, I move for the admission of
10 D-602.

11 MS. STATSKY SMITH: No objection.

12 THE COURT: 602 is admitted and may be published.

13 BY MR. LEVINE:

14 Q. And, again, if you look on the left-hand side -- for
15 example purposes, we'll take the top -- what was meant to be
16 represented there?

17 A. Again, it was just the time periods of chicks hatched
18 after a certain date, when they would turn 17 weeks, and what
19 the square inches they needed to be housed at.

20 Q. Now, if you look at this analysis, I believe it includes
21 certain farms that were not on the previous 2002 analysis; Is
22 that correct?

23 A. Correct.

24 Q. Which farms are those?

25 A. We have the County Line and Germantown on the second

1 page, the Hyde County. So you've got Oconee, including
2 contracts on here.

3 Q. Okay.

4 A. I think that's it.

5 Q. And County Line and Germantown had been purchased post
6 your 2002 analysis; is that correct?

7 A. Correct.

8 Q. And Hyde County came online post that 2002 analysis,
9 correct?

10 A. Yes.

11 Q. I believe you already referenced Oconee?

12 A. Yes.

13 Q. Now, what was the sort of bottom line, if you will,
14 regarding this analysis? And I'll direct you to the second
15 page, the bottom right-hand corner.

16 A. Yeah, just like there was a summary for the company on
17 the first one that I put together that was showing, you know,
18 a 20 percent decrease, this was updating where we were at at
19 the beginning of 2008, projecting forward that we'd actually
20 had a 15 percent increase based on, you know, some of the
21 expansion that we had done or remodeling acquisition.

22 Q. Now, if you look at Lincoln County, the original capacity
23 number on the 2002 analysis, the previous exhibit, what was
24 the original capacity there?

25 A. The original capacity on mine was just a little over a

1 million birds.

2 Q. And what is the original capacity listed on this 2002
3 analysis?

4 A. 1.3.

5 Q. Have you determined which one is correct?

6 A. Mine is correct, yes. It looks like, again, he didn't
7 use my document to do his and was going backward in time and
8 probably forgot when we added one or two of the large houses.
9 You'd have to ask him on that.

10 Q. Okay. Did you correct him at the time?

11 A. No. I didn't have the other document in front of me and
12 we were all focusing on the final phase-in at the time, not
13 that original number on a few individual houses -- I mean,
14 farms.

15 Q. Now, since 2000, has Rose Acre's flock size grown every
16 year?

17 A. Yes.

18 Q. Has its capacity grown every year?

19 A. Yes.

20 Q. And how do you know that?

21 A. Because I'm the lead person in charge of the team that's
22 doing the scheduling and moving the birds and projecting the
23 hatch dates, and every year we were doing more.

24 Q. Okay. And did there -- did there come a time where you
25 look at data to ensure that?

1 A. Yes.

2 Q. And have you satisfied yourself that based on the data
3 Rose Acre keeps, that, in fact, Rose Acre has added capacity
4 year after year?

5 A. Yes.

6 MR. LEVINE: Your Honor, I'd like to publish
7 Demonstrative 7.

8 MR. NEUWIRTH: Your Honor, we would object on the
9 ground that we don't believe any basis has been established
10 for the numbers that are shown. There's been no foundation
11 laid for those numbers or that the witness is familiar with
12 these numbers.

13 THE COURT: Well, why don't you show the witness the
14 exhibit straightaway and then you can talk to him about it
15 before showing it if it's going to be shown.

16 MR. NEUWIRTH: Thank you, Your Honor.

17 THE COURT: Um-hum.

18 I have it.

19 MR. LEVINE: May I approach?

20 THE COURT: Yes, you may.

21 BY MR. LEVINE:

22 Q. Now, Mr. Hurd, this chart in front of you, have you seen
23 this before?

24 A. Yes.

25 Q. And what does it purport to represent?

1 A. It shows each individual year from 2002 to 2018, the
2 added capacity that we added to our farm.
3 Q. And where were these numbers ultimately drawn from?
4 A. Drawn from our capital asset lists that we keep, that we
5 approve at the Board level, from our weekly recordkeeping
6 system, from my records on projections to project what flock
7 sizes we have going forward that we have to fold into the
8 overall master schedule.
9 Q. And does Rose Acre have a database on -- of its -- that
10 represents its flock capacity at any given moment?
11 A. Yes. We have a data system that goes out to each of our
12 individual farms. We collect daily information. We want to
13 know the number of birds that died that day, how much feed was
14 consumed and the amount of water, amount of eggs laid,
15 obviously, a lot of various information that we collect daily,
16 compile it at our corporate office. It's a Layer Information
17 Management System that it's called. We call it LIM for short.
18 It's something that we generate a lot of reports and documents
19 from.
20 Q. And was that one of the sources that you referred to
21 earlier that you used in order to --
22 A. Yes.
23 Q. -- look at this, create this chart?
24 A. Yes.
25 MR. LEVINE: Okay, Your Honor, I move to publish it.

1 MR. NEUWIRTH: Your Honor, there has been reference
2 made to certain underlying materials that it's not clear were
3 ever the subject of production or discovery in this case. And
4 so --
5 THE COURT: You know it was not?
6 MR. NEUWIRTH: It's just not clear from the
7 description that was provided.
8 MR. LEVINE: I believe the LIM system has been
9 turned over in production.
10 THE COURT: I'm going to permit the display of
11 Demonstrative 7 and trust that if you find that there's a flaw
12 in it from your perspective, you can cover it in
13 cross-examination.
14 MR. NEUWIRTH: Yes, thank you, Your Honor.
15 MR. LEVINE: Can you show Demonstrative 7?
16 BY MR. LEVINE:
17 Q. Is this the demonstrative we've been discussing for the
18 past couple of days -- couple of minutes?
19 A. Yes.
20 Q. Okay. And can you just briefly summarize what it
21 actually represents?
22 A. Okay. So, for instance, in 2002, you've got a red bar
23 and that would be an increase in capacity that year of
24 1.2 million hens, laying hens. And then in 2003 is the net --
25 the increase over and above the 2002 amount was 3, 1, 3,000

1 (sic) laying hen capacity. So each of the red bars is what we
2 increased that year, and the blue bar is just a cumulative one
3 from 2002 onwards.
4 Q. Now, you're careful to talk about capacity. How does
5 capacity or what is capacity in relation to the actual layer
6 flock size at any given time?
7 A. Well, the capacity is a number we use in our projections
8 and schedules on what we put into the house on day one. As
9 birds age, we have daily mortality. So the number of live
10 birds is never more than the entire company's capacity at any
11 one given point.
12 Q. Just to be clear, you didn't actually add these -- these
13 numbers don't represent the actual number of layers that were
14 added to Rose Acre's flock?
15 A. No. It's the capacity of either the remodeling, adding
16 housing, or acquisition to our overall company, total of layer
17 capacity.
18 Q. Does it also represent the Hyde County, the new green
19 field farm?
20 A. Yes. Yes.
21 Q. And you talked about mortality and the like. Are there
22 any other reasons that the flock size might not reach capacity
23 in any given moment?
24 A. We have some houses that we've decommissioned that
25 haven't been remodeled quickly or timely. We've got other

1 mortality issues that arise from natural disasters such as a
2 tornado, something of that nature. We've had a few of those
3 or heat wave, which our numbers are down until we get birds
4 replaced.
5 Q. Okay. Now, if we actually want to focus on the flock
6 size as opposed to capacity, do you have an understanding as
7 to whether over the period of time from 2000 to 2002 to 2008
8 and beyond, did Rose Acre actually grow its layer flock size?
9 A. Yes. Live birds increased each year.
10 Q. Okay. And again, how do you know that?
11 A. It's part of my daily job to look at the overall numbers
12 in the live production department, and again, back to the
13 master schedule, I'm looking at what we need to be doing a
14 year and a half, two years down the road.
15 Q. Okay. And --
16 MR. LEVINE: And, Your Honor, may I approach?
17 THE COURT: Yes.
18 MR. NEUWIRTH: Your Honor --
19 THE COURT: He hasn't asked to do anything yet.
20 BY MR. LEVINE:
21 Q. I've put before you what has been identified as D-1011.
22 Do you see that, sir?
23 A. Yes.
24 Q. Did you create this chart?
25 A. No.

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1 Q. Have you looked to see whether these numbers are
 2 accurate?
 3 A. Yes.
 4 Q. Okay. And I just want to focus from 2004 -- when did the
 5 LIM system go into effect?
 6 A. 2004.
 7 Q. Okay. So focusing on 2004 through, you know, the end of
 8 2014, what is your understanding as to the layer population of
 9 Rose Acre?
 10 A. That it increased over time.
 11 Q. Okay. And do you know by how much it increased?
 12 A. From 2004 to what point? What point?
 13 Q. 2004 through the end of 2014.
 14 A. Approximately 3 million.
 15 Q. Okay. And --
 16 MR. LEVINE: May I publish this to the jury?
 17 MR. NEUWIRTH: Your Honor, we object on two grounds.
 18 First, there appears to be an admission that the witness
 19 doesn't know anything about pre-2004 information which is
 20 shown here as reflected in the questioning and answering.
 21 And, second, the witness has acknowledged that he did not put
 22 this together himself, and although he says that he checked
 23 the numbers, there's been nothing to establish that what he
 24 did to confirm that these numbers are accurate, and, frankly,
 25 given the type of chart it is, it's very difficult to see how

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1 one could confirm the numbers without some other source to
 2 identify what numbers are actually being plotted here.
 3 THE COURT: Do you wish to cover any more territory?
 4 BY MR. LEVINE:
 5 Q. Well, Mr. Hurd, did you check these layer flock numbers
 6 against the LIM system?
 7 A. Yes.
 8 Q. Okay. And are the numbers reported, at least post-2004,
 9 accurately represented from what the LIM system has in its
 10 database?
 11 A. Yes.
 12 THE COURT: I'm going to permit him to use the
 13 exhibit as an aid to any further testimony on these limited
 14 points but recognizing that counsel will be permitted wide
 15 latitude in cross-examination.
 16 MR. NEUWIRTH: Thank you, Your Honor.
 17 THE COURT: Um-hum.
 18 BY MR. LEVINE:
 19 Q. And, again, does this chart accurately summarize Rose
 20 Acre's layer flock from -- as reported by the LIM system from
 21 2004 through the end of 2014?
 22 A. Yes, the live bird inventory.
 23 Q. And what do you understand the three different lines to
 24 be?
 25 A. Well, the red one on top is the total layer inventory.

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1 The green one would be the inventory taking out any contracts
 2 that we had and that other producers were housing our birds.
 3 And then the blue line on the bottom would take the contracts
 4 and acquisitions out of the live bird total.
 5 Q. And no matter how you total it, while Rose Acre was on
 6 the Certified Program, did it increase its flock size?
 7 A. Yes.
 8 Q. Now, flock size translates at some level to egg
 9 production; is that correct?
 10 A. Yes.
 11 MR. LEVINE: Your Honor, may I approach?
 12 THE COURT: Yes.
 13 BY MR. LEVINE:
 14 Q. Now, I've put before you, Mr. Hurd, D-1008. Do you see
 15 that?
 16 A. Yes.
 17 Q. Okay. What does this chart represent?
 18 A. This is a chart on our Rose Acre egg production total
 19 dozens produced in a fiscal year. And a fiscal year for us is
 20 July through June.
 21 Q. Okay. So this is not calendar year?
 22 A. Not calendar year, no.
 23 Q. Okay. And where did these numbers come from?
 24 A. From our year end, fiscal year end consolidated financial
 25 statements.

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1 Q. And do those consolidated financial statements always
 2 report dozens produced?
 3 A. For the year to date, yes.
 4 Q. And did you do anything other than mechanically copy the
 5 number that was on the consolidated financial statement onto
 6 this chart?
 7 A. That's the number right off the financial statement.
 8 MR. LEVINE: Your Honor, I move for admission of
 9 D-1008 as the summary exhibit.
 10 MS. STATSKY SMITH: Subject to our
 11 cross-examination, we don't object.
 12 THE COURT: It will be admitted.
 13 MR. LEVINE: Thank you, Your Honor. May I publish
 14 it?
 15 THE COURT: Yes.
 16 BY MR. LEVINE:
 17 Q. Okay. And in 2001, how many dozens did Rose Acre
 18 produce?
 19 A. 329 thousand -- 885,599.
 20 Q. I'm going to ask you that again. 329,000 or 329 million?
 21 A. Million. I'm sorry. 329,885,599.
 22 Q. And if you go down, do you see that the numbers, except
 23 for one year, increased year after year?
 24 A. Yes.
 25 Q. Okay. And in one year they did not increase; is that

1 correct?

2 A. Correct. 2004 dropped to 363 million.

3 Q. Do you have an understanding as to why

4 Rose Acre's production dropped that year?

5 A. That was the year we were doing a lot of heavy

6 remodeling, specifically at our Cort Acres facility. We took

7 a lot of houses out of production while we were gutting the

8 insides, prepping them for the new cage installations. As you

9 can see reflected in the following fiscal year, there's a

10 rather large increase as we got those birds back into

11 production.

12 Q. And I think, as every one well knows by now, Rose Acre

13 joined the Certified Program in the beginning of 2002?

14 A. Correct.

15 Q. And in fiscal 2002, how many dozens were produced?

16 A. 344,770,221 dozens.

17 Q. And by the 2008, 2009, by the end of the Class Period,

18 how many dozens did Rose Acre produce?

19 A. 2009 it was 458,286,792 dozen.

20 Q. And at the end of this chart, what does it represent for

21 2011?

22 A. 517,326,469 dozen.

23 Q. And was Rose Acre still on the Certified Program at that

24 time?

25 A. Yes.

1 Q. Is Rose Acre still on the Certified Program today?

2 A. Yes, we are.

3 Q. And has the Certified Program ever inhibited your ability

4 to expand and produce more eggs?

5 A. No.

6 MR. LEVINE: Nothing further at this time.

7 THE COURT: You may cross-examine.

8 MS. STATSKY SMITH: Good afternoon, Your Honor.

9 Good afternoon, ladies and gentlemen. Good afternoon,

10 Mr. Hurd. I'm Dana Statsky Smith. Nice to meet you all.

11

12 CROSS-EXAMINATION

13 BY MS. STATSKY SMITH:

14 Q. So, Mr. Hurd, you stated that, as of today, you are the

15 vice president for live production?

16 A. Yes.

17 Q. But you were not placed in this role until November 2011,

18 correct?

19 A. Correct.

20 Q. And during the time period from 2000 to 2008, you were

21 not responsible for laying hens, correct?

22 A. Correct.

23 Q. You were primarily responsible for pullet rearing,

24 correct?

25 A. Yes, the breeder farm hatchery and the pullets.

1 Q. And from 2000 to 2008, you didn't play any role in

2 developing the UEP Certified Guidelines, did you?

3 A. No.

4 Q. And you weren't a member of the UEP committees, correct?

5 A. Correct.

6 Q. And you didn't have any role with Scientific Advisory

7 Committee?

8 A. No, I did not.

9 Q. But you just have a general understanding of how the

10 Certified Program worked from 2000 to 2008?

11 A. Well, I've seen the documents for the program, yes.

12 Q. And you saw those as a result of your participation in

13 the Board?

14 A. Yes. K.Y. Hendrix bringing that to my attention.

15 Q. Now, one component of the UEP Certified Program required

16 egg producers to adhere to a certain set of square inches per

17 hen in order for a producer to be certified, correct?

18 A. Correct.

19 Q. And it's true that Rose Acre followed UEP Certified

20 Program's cage-space requirements, correct?

21 A. Correct.

22 Q. And as a result of those changes to cage space, flock

23 size would decrease?

24 A. For those houses, yes.

25 Q. Now, Mr. Hurd, would you agree with me that

1 Rose Acre's market share of eggs rose from about 6 percent to

2 8 percent between 2000 and 2008?

3 A. I wouldn't know.

4 Q. Okay. I'm going to hand you something.

5 MS. STATSKY SMITH: Your Honor, may I approach?

6 THE COURT: Sure.

7 BY MS. STATSKY SMITH:

8 Q. Mr. Hurd, can you turn to page 36 and review Exhibit 12.

9 A. Okay. Okay.

10 Q. Now, I've handed you what is a copy of Dr. David's expert

11 report. Do you see that?

12 A. Yes.

13 Q. And Dr. David is one of Rose Acre's expert witnesses in

14 this case?

15 A. Yes.

16 Q. And you were interviewed by Dr. David in connection with

17 this litigation, correct?

18 A. Um, a while back, yes.

19 Q. And having looked at Figure 12, would you agree now that

20 Rose Acre's market share increased from 6 percent to 8 percent

21 from 2000 to 2008?

22 A. Yes. Almost 2009 or '10, actually, but there's no line

23 drawn across there, but it would be yes.

24 Q. So before, you spoke about acquisitions, correct?

25 A. Yes.

1 Q. And when Rose Acre joined UEP -- you can put that down.
 2 A. Okay.
 3 Q. When it joined UEP through the end of 2008, Rose Acre
 4 only acquired two new farms, correct?
 5 A. By the end of 2008, there was two farms, County Line and
 6 the Germantown egg farm, correct.
 7 Q. And would you agree with me that acquiring a farm from
 8 another producer does not necessarily increase the overall egg
 9 supply in the United States?
 10 A. If no changes were made to that farm, correct.
 11 Q. If you want to build a new hen farm, you need to find the
 12 right ground for it, correct?
 13 A. Yes.
 14 Q. And that can take a fair amount of time, correct?
 15 A. Depending upon the state, yes.
 16 Q. And if you want to build a new hen farm or house, you
 17 need a permit, correct?
 18 A. Correct.
 19 Q. And, in fact, not only do you need one permit, it may
 20 take up to several permits, correct?
 21 A. Correct.
 22 Q. And it could take several years to get those permits,
 23 correct?
 24 A. Again, it depends on the state. I mean the
 25 North Carolina one would have been the longest period that we

1 had to wait.
 2 Q. And then building and installing cages can take a long
 3 time as well, correct?
 4 A. Yes.
 5 Q. And part of the reason for that is, as you heard while
 6 sitting here the last couple of weeks, that there's probably
 7 only 10 to 15 equipment companies left in the egg-laying
 8 industry which can build these cages, correct?
 9 A. Correct.
 10 Q. And several of those are located in Europe, correct?
 11 A. Yes.
 12 Q. And building new facilities is very expensive, isn't it?
 13 A. Yes, it is.
 14 Q. Wouldn't you agree that the construction of new farms
 15 cost around \$8 per hen meaning, if you want to build a farm
 16 with 125,000 hens, it could cost you \$1 million?
 17 A. The costs vary based on the site, the size of the house,
 18 but, yes, it is expensive.
 19 Q. And Rose Acre was in a position to get a bank loan,
 20 correct?
 21 A. At what period of time?
 22 Q. Between 2000 and 2008.
 23 A. Different points, probably yes.
 24 Q. But you don't personally know that every producer would
 25 be in that position, correct?

1 A. No, I do not know that.
 2 Q. Not every producer is as large as Rose Acre, correct?
 3 A. Correct.
 4 Q. Could you testify to any other egg producer's ability to
 5 get a loan?
 6 A. No, I could not.
 7 Q. To get a permit?
 8 A. No, I could not.
 9 Q. To build a new facility?
 10 A. Nope.
 11 Q. And do you know whether any of the other producers on the
 12 UEP Certified Program were in a position to build or not?
 13 A. No, I do not.
 14 Q. So the only thing really that you can tell this jury is
 15 that Rose Acre in some instances was able to make up for their
 16 lost production through building?
 17 A. Yes.
 18 Q. So every new building that Rose Acre opened between the
 19 period from 2000 to 2008 must have been planned several years
 20 ahead, correct?
 21 A. No.
 22 Q. Did Rose Acre complete building any new farms between
 23 2002 and 2008, when this lawsuit was filed?
 24 A. I believe the Hyde County farm was completed around 2009,
 25 the last house was going in. It was a 12-house farm, rather

1 large -- our largest.
 2 Q. But not by 2008?
 3 A. No, but it was almost done. It wasn't complete, correct.
 4 Q. And the Donovan farm, that was not built in 2004 but
 5 acquired by Rose Acre, correct?
 6 A. Yes.
 7 Q. And it was acquired in 2001 before Rose Acre joined the
 8 UEP?
 9 A. Yes.
 10 Q. So the Donovan farm doesn't represent an expansion of the
 11 overall layer inventory by Rose Acre, does it?
 12 A. No, it's a very small farm.
 13 Q. And Jen Acres farm, are you familiar with Jen Acres?
 14 A. Yes, I am.
 15 Q. And is that also called Jen Acres Plus?
 16 A. No. Jen Acres layer farm is the original site, Jen Acres
 17 Plus is across the street. It originally was a pullet farm
 18 and decommissioned that, and then it was turned into a
 19 cage-free farm.
 20 Q. So when you speak about new additions to the Rose Acre
 21 Farms, you don't specify whether they're cage-free or cage
 22 layers. You just talk about capacity overall?
 23 A. Capacity overall, but I can give you that detail if you
 24 want.
 25 Q. So those charts -- let's turn back to some of the charts

1 that you discussed before or that demonstrative exhibit.
 2 A. Okay.
 3 Q. Let's look at Demonstrative 7, if we can bring that up.
 4 Now, you didn't create these numbers, did you?
 5 A. No.
 6 Q. These numbers came from your expert?
 7 A. Yes.
 8 Q. And there's no LIM data between the period of 2002 to
 9 2004, which is -- which is shown here, correct?
 10 A. Not for the LIM system. It started in 2004. But we have
 11 other documents that talk about the expansion and what we put
 12 in place.
 13 Q. But didn't you say before that this was based on LIM
 14 data?
 15 A. No, you said an expert had put this together. The LIM
 16 data was the other chart, 001. That one.
 17 Q. This information was just developed by your expert?
 18 A. This information was put together from our information on
 19 what we added each year from 2002 to 2014 and '18, what we
 20 spent and added layer-capacity-wise.
 21 Q. Right. This is about layer capacity but not actually
 22 about the number of birds, correct?
 23 A. Correct, layer capacity.
 24 Q. This doesn't actually accurately reflect the number of
 25 birds that Rose Acre had?

1 A. Correct. That's just the capacity, not the live birds.
 2 Q. And it also doesn't reflect the breakout of different
 3 types of farms like we just discussed, correct?
 4 A. Yes.
 5 Q. So this could include cage-free eggs?
 6 A. Hmm, no. I mean, at the very end there, the 1.8 million
 7 in 2014-18, that might have some cage-free in there, but all
 8 of the rest of this would have been our additions of the large
 9 commercial cages that we added onto the farm sites or
 10 acquisitions.
 11 Q. But would this also represent organic eggs?
 12 A. We don't have any organic eggs.
 13 Q. Okay. What about value-added eggs?
 14 A. We have some value-added eggs, but they are raised in
 15 cages.
 16 Q. Okay. And so, but this could be beyond -- so these last
 17 few years, you said, would include organic eggs -- I mean
 18 cage-free eggs? Excuse me.
 19 A. The 2014 to 18 number, the 1.8 million, increased in that
 20 time frame. I know it has some cage-free in there.
 21 Q. And there were no cage-free eggs between the period from
 22 2004 to 2008?
 23 A. Not added in these numbers that I'm aware of.
 24 Q. If I asked your expert, would he be aware?
 25 A. Perhaps.

1 Q. Let's turn to remodeling. Isn't it true between 2002
 2 through 2008, when this lawsuit was filed, Rose Acre had
 3 remodeled some of its existing farms?
 4 A. Yes.
 5 Q. Remodeling farms is necessary after a certain period of
 6 time, correct?
 7 A. Yes.
 8 Q. And Rose Acre Farms are equipped with A-frame cages?
 9 A. Yes.
 10 Q. And these A-frame cages have a life span of several
 11 decades?
 12 A. Depending on the farm and what condition you keep them
 13 in, they have a longevity, yes.
 14 Q. And isn't it true that Rose Acre's A-frame cages are a
 15 part and in usage on Rose Acre's farm since 35 years ago?
 16 A. Repeat the question. Sorry.
 17 Q. Isn't it true that some of Rose Acre's A-frame cages have
 18 been in use for 35 years?
 19 A. Correct.
 20 Q. And that's why Rose Acre only had to do limited
 21 remodeling between 2002 and 2008, correct?
 22 A. We were doing remodeling to increase the capacity as well
 23 as looking at age of cages and what made the most sense to add
 24 layer numbers to where our customer base was.
 25 Q. So many of the henhouses were remodeled before Rose Acre

1 joined UEP?
 2 A. Um, no. I mean, over time, I'm just trying to think
 3 since I started in '86 how many remodelings happened prior to
 4 UEP and it was minimal. We were adding farms at the time, but
 5 a lot of remodeling happened during -- during this time frame.
 6 Q. Let's take a look at the data report again. And if you
 7 could turn to page 30 and look at Exhibit 11.
 8 A. Yes.
 9 Q. And so many of the henhouses here were remodeled before
 10 Rose Acre joined the UEP, correct?
 11 A. Um, yes, up to 2001.
 12 Q. And this exhibit lists two projects completed in 2002,
 13 correct?
 14 A. I'm sorry. I was looking at the chart. Can you repeat
 15 your question?
 16 Q. This -- this exhibit on 11, it shows two projects
 17 completed in 2002, correct?
 18 A. Two -- yeah, one was a remodeling of houses 11, 13, 15,
 19 14, 18 and then built houses 13 through 16 at Pulaski.
 20 Q. And isn't it true that those would have been planned
 21 before Rose Acre joined UEP?
 22 A. Um, I'm not sure when those were planned.
 23 Q. So Rose Acre's remodeling may not have been a step that
 24 was taken in order to offset the decreased layer numbers
 25 caused by Rose Acre's participation in the UEP Program,

1 correct?

2 A. No. The remodeling after that made sense to do because

3 you wanted to get your capacity numbers up, but you asked me

4 earlier when the plans were for those two remodels or builds

5 in 2002 and I wasn't sure when that planning took place.

6 Q. Mr. Hurd, isn't it true that Rose Acre also closed farms

7 between 2000 and 2008?

8 A. Um, we closed Jen Acres and I'm not quite sure the exact

9 date off the top of my head, if that was in that time frame or

10 not.

11 Q. Did you -- do you recall that Pentagon 2 was closed in

12 2003?

13 A. That was a breeder farm, yes. We closed that.

14 Q. And do you recall that Egg Acres was closed around 2000?

15 A. Yes.

16 Q. Let's take a look at slide Stages of Production, the

17 Demonstrative 6 that you were shown earlier. Now, you

18 represented earlier that this is the stages of production of

19 hens at Rose Acre, correct?

20 A. Correct.

21 Q. And this picture, breeder flocks, are those caged layer

22 hens? Does that picture accurately represent how breeder hens

23 for caged layers would be raised?

24 A. Our breeders are raised cage-free on an elevated floor in

25 a building where they have free access to walk around.

1 Q. And what about your pullets in picture three for growing

2 female chickens, are those also raised in a field?

3 A. No. Ours are raised in cages.

4 Q. Are there any cage space requirements for pullets?

5 A. Um, not through the Animal Care Certified Program with

6 the UEP, but we have our own internal numbers that we use.

7 Q. And in picture two, you talk about hatching and sorting,

8 correct?

9 A. Correct.

10 Q. And so sorting, that's where the male and female chickens

11 are separated?

12 A. Correct.

13 Q. And the female chickens are moved onto Stage 3?

14 A. Yes.

15 Q. The male chicks are killed, aren't they?

16 A. Unfortunately, we don't have the use for a rooster after

17 the breeding farm cycle.

18 Q. And so?

19 A. They're euthanized at the hatchery, yes.

20 Q. Even under the Animal Welfare Program?

21 A. Yes.

22 Q. You spent some time earlier speaking about Rose

23 Acre's and the A-frame cages.

24 A. Yes.

25 Q. You talked about manure?

1 A. Yes.

2 Q. And some Rose Acre barns, the manure can be stored in the

3 barn for up to two years; is that correct?

4 A. That's correct. A lot of the states make us have at

5 least six months of storage to make sure we can store it

6 during winter months prior to being sold.

7 Q. And then it's picked up with a tractor trailer and moved

8 out?

9 A. Yes.

10 Q. And when a significant amount of manure is stored in a

11 henhouse, that can increase levels of ammonia, correct?

12 A. Correct.

13 Q. And that's bad for hen welfare as you discussed earlier,

14 correct?

15 A. If it's allowed to get up around the birds, yes.

16 Q. And as you heard earlier, the Scientific Advisory

17 Committee recommends that ammonia concentration to which birds

18 were exposed should be less than ten parts per million,

19 correct?

20 A. I meant 10 to 25-part per million range, yes.

21 Q. And from a scientific perspective, it's very clear that

22 birds should not be exposed chronically to 25 parts per

23 million or above, correct?

24 A. Correct.

25 Q. But that was not Rose Acre's policy, correct?

1 A. It was our policy. I mean, the way the barns are

2 constructed with the ventilation systems, we bring all the

3 fresh air in at the top of the house over the chickens, down

4 through the cages, over the manure and out. So we're

5 directing manure down and out with fans not up over the birds.

6 Q. But -- but Rose Acre allowed for up to 50 parts per

7 million in its own manuals, correct?

8 A. Yes. In the beginning, yes, 50 parts per million, yes.

9 Q. And at 50 parts per million, you would expect that that

10 would result in severe distress to any living animal, correct?

11 A. 50 parts per million is noticeable, and that's when we

12 take corrective actions to bring it down at that time. Again,

13 we're in the houses with the birds every day. We've got

14 employees in there servicing the birds, exposed to the same

15 air.

16 Q. And at 50 parts per million, even your own eyes would

17 water, correct?

18 A. You would notice it, but like I said, that's when we get

19 to the ventilation and kick on more ventilation fans, put

20 purges in, get the ammonia out of the house. We have large

21 fans also that are down in the manure pits to help dry that

22 manure and direct it out.

23 Q. Can we take a look at Exhibit 1011 again?

24 A. Okay.

25 Q. And just like the information that we just discussed

1 before in Demonstrative 7, you didn't actually create this
 2 exhibit, correct?
 3 A. I did not. I did not.
 4 Q. And you don't know where the data came from for this
 5 exhibit?
 6 A. Um, from the LIM, from 2004 on, but I'm not sure what he
 7 used prior to that.
 8 Q. And the blue line shows what happens if you take out
 9 contract farms and acquisitions, right?
 10 A. Yes, for the live bird inventory at those data points.
 11 Q. And so it purports to isolate Rose Acre's growth solely
 12 through new construction?
 13 A. And remodeling.
 14 Q. But some of that construction was for specialty eggs,
 15 correct?
 16 A. Well, if you're talking about the cage-free, that would
 17 be a specialty egg that we did later on at the end of the
 18 graph period.
 19 Q. In fact, between 2000 and 2008, the only two facilities
 20 that Rose Acre fully built Donovan and Jen Acres Plus,
 21 correct?
 22 A. New facilities fully built? Is that your question?
 23 Q. Yes.
 24 A. Jen Acres Plus and Donovan. Correct. New facilities.
 25 Q. And those two new facilities produced cage-free eggs,

1 correct?
 2 A. Yes.
 3 Q. And specialty eggs are outside the scope of that cage,
 4 correct?
 5 A. Yes. They were very small farms, yes.
 6 Q. So if we took out specialty eggs from those two
 7 facilities, that would lower the blue line further, correct?
 8 A. Like I said, this is millions of birds of live bird
 9 inventory. The Jen Acres Plus was five houses of 13,000
 10 birds, and the Donovan was 13 houses of 13,000 birds apiece.
 11 It wasn't a significant amount of live bird inventory at those
 12 two locations.
 13 Q. But you don't know by how much, correct?
 14 A. By how much what.
 15 Q. How much the line would drop if we took those out,
 16 correct?
 17 A. Well, no, I do not, but it's -- it's 50-, 60,000 birds
 18 total. So --
 19 MS. STATSKY SMITH: I'm going to pass the witness.
 20 THE COURT: All right, any redirect?
 21 MR. CALLOW: No questions, Your Honor.
 22 MS. CHAPMAN: Nothing, Your Honor.
 23 MR. LEVINE: Just a couple.
 24 THE COURT: Okay.
 25

1 REDIRECT EXAMINATION
 2 BY MR. LEVINE:
 3 Q. Mr. Hurd, you were asked about remodels?
 4 A. Yes.
 5 Q. Now, when you remodeled, do you have to add capacity?
 6 A. You don't have to, no.
 7 Q. Why did Rose Acre add capacity whenever it remodeled?
 8 A. So that we could increase our number of birds, layer
 9 flock.
 10 Q. And the remodels that you did post joining the Certified
 11 Program, did you always add capacity when you engaged in those
 12 remodels?
 13 A. Yes.
 14 Q. And I believe you talked about building out new
 15 facilities between 2000 and 2008 --
 16 A. Yes.
 17 Q. -- just a minute ago.
 18 What about Hyde County?
 19 A. We started that in 2006. The initial houses started
 20 going. It didn't complete the farm until 2009, but, you know,
 21 10, 11 of the 12 houses were completed by 2008.
 22 Q. And how many birds does 10, 11 houses represent?
 23 A. Each house holds 284,488 birds.
 24 Q. You know that too well?
 25 A. Yes.

1 Q. And so therefore, by the end of 2008, how many birds did
 2 Rose Acre add as a result of building out Hyde County starting
 3 in 2006?
 4 A. Well, if it was ten houses, ten times that number would
 5 be 2.8 million.
 6 MR. LEVINE: I have nothing further.
 7 THE COURT: Any recross?
 8 MS. SMITH: Just one or two more questions.
 9 THE COURT: Okay.
 10 RECROSS-EXAMINATION
 11 BY MS. STATSKY SMITH:
 12 Q. Hi. Mr. Hurd, how many of the Hyde County houses were
 13 done in 2006?
 14 A. I -- I think the first one was started maybe in 2006.
 15 Q. And how many were done in 2007?
 16 A. Um, we had a crew on-site knocking them out. I don't
 17 know off the top of my head, but I know we were almost done in
 18 2009. So I'm sure it was prorated between that time frame.
 19 Q. So maybe one by the end of 2008?
 20 A. Well, if we finished by 2009, it would have been more
 21 than one.
 22 MS. STATSKY SMITH: No further questions.
 23 MR. LEVINE: Nothing further.
 24 THE COURT: You may step down, Mr. Hurd.
 25 And, Rose Acre, if you want, you may call your next